

1 BILL NO. S-82-06-1/13 (as amended)

2 SPECIAL ORDINANCE NO. S-127-82

3 AN ORDINANCE approving an Agreement  
4 between the City of Fort Wayne and  
as amended 7-27 ---- Ronald L. Bonar & Associates, Inc.  
5 preparation of plans and specifications along with  
6 the City Sewer System, and the Water inspection of  
7 Pollution Control Plant that were portions of  
8 damaged by the 1982 Flood.

9 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY  
10 OF FORT WAYNE, INDIANA:

11 SECTION 1. That a certain Agreement dated May, 1982  
12 between the City of Fort Wayne, Indiana, by and through its  
13 Mayor and the Board of Public Works, and Ronald L. Bonar &  
14 Associates, Inc., for:

as amended 13 7-27 preparation of plans and specifications along with inspection of  
15 repairing and restoration of portions of portions of  
16 the City Sewer System and the Water Pollution  
17 Control Plant including lagoons and ponds that  
18 were damaged by the 1982 Flood,

19 at a total cost of Two Hundred Thirty Six Thousand Three and No/100  
20 Dollars (\$236,003.00), all as more particularly set forth in  
21 said Agreement which is on file in the Office of the Board of  
22 Public Works and is by reference incorporated herein, made a  
23 part hereof, be and the same is in all things hereby ratified,  
24 confirmed and approved. Two copies of said Agreement are on  
25 file with the Office of the City Clerk and made available for  
26 public inspection according to law.

27 SECTION 2. That this Ordinance shall be in full force  
28 and effect from and after its passage and approval by the Mayor.

29   
30 Councilmember

31 APPROVED AS TO FORM  
32 AND LEGALITY

33   
34 Bruce O. Boxberger, City Attorney

Read the first time in full and on motion by Burns, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATE: 7-13-82

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Burns, seconded by Stier, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>5</u>	<u>2</u>	<u>1</u>	<u>1</u>	
<u>BRADBURY</u>	<u>X</u>				
<u>BURNS</u>			<u>X</u>		
<u>EISBART</u>	<u>X</u>				
<u>GIAQUINTA</u>	<u>X</u>				
<u>NUCKOLS</u>				<u>X</u>	
<u>SCHMIDT</u>		<u>X</u>			
<u>SCHOMBURG</u>		<u>X</u>			
<u>STIER</u>	<u>X</u>				
<u>TALARICO</u>	<u>X</u>				

DATE: 7-27-82

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) NO. S-127-82 on the 27th day of July, 19 82.

ATTEST:

(SEAL)

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of July, 19 82, at the hour of 11:30 o'clock PM, E.S.T.

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 28th day of July, 19 82, at the hour of 4 o'clock PM, E.S.T.

Win Moses, Jr.  
WIN MOSES, JR. - MAYOR

Read the first time in full and on motion by \_\_\_\_\_,  
seconded by \_\_\_\_\_, and duly adopted, read the second time  
by title and referred to the Committee \_\_\_\_\_ (and the City  
Plan Commission for recommendation) and Public Hearing to be held after  
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,  
Indiana, on \_\_\_\_\_, 19\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ .M., E.S.T.

DATE: \_\_\_\_\_

CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by \_\_\_\_\_,  
seconded by \_\_\_\_\_, and duly adopted, placed on its  
passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>8</u>	<u>0</u>	_____	<u>1</u>	_____
<u>BRADBURY</u>	<u>X</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>X</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>X</u>	_____	_____	_____	_____
<u>GiaQUINTA</u>	<u>X</u>	_____	_____	_____	_____
<u>NUCKOLS</u>	_____	_____	_____	<u>X</u>	_____
<u>SCHMIDT</u>	<del>X</del>	<del>_____</del>	_____	_____	_____
<u>SCHOMBURG</u>	<del>X</del>	<del>_____</del>	_____	_____	_____
<u>STIER</u>	<u>X</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>X</u>	_____	_____	_____	_____

DATE: \_\_\_\_\_

  
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)  
(APPROPRIATION) ORDINANCE (RESOLUTION) NO. \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ATTEST:

(SEAL)

CHARLES W. WESTERMAN - CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_  
o'clock \_\_\_\_\_ .M., E.S.T.

CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ .M., E.S.T.

WIN MOSES, JR. - MAYOR

P. 2

Held 7/27/82

BILL NO. S-82-07-13 (as amended)

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN  
ORDINANCE approving an Agreement between the City of Fort Wayne and  
Ronald J. Bonar & Associates, Inc. to repair and restore portions of  
the City Sewer System, and the Water Pollution Control Plant that  
were damaged by the 1982 Flood

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT  
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE as PASS.

PAUL M. BURNS - CHAIRMAN

MARK E. GIAQUINTA - VICE CHAIRMAN

JAMES S. STIER

JANET G. BRADBURY

ROY J. SCHOMBURG

Mark C. Burns  
James S. Stier  
Janet G. Bradbury

7-27-82  
CONCURRED IN  
DATE            CHARLES W. WESTERMAN, CITY CLERK

1 BILL NO. S-82-06-

2 SPECIAL ORDINANCE NO. S-

3 AN ORDINANCE approving an Agreement  
4 between the City of Fort Wayne and  
5 Ronald L. Bonar & Associates, Inc.  
6 to ~~repair and restore portions of~~ *same as below*  
the City Sewer System, and the Water  
Pollution Control Plant that were  
damaged by the 1982 Flood.

7 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY  
8 OF FORT WAYNE, INDIANA:

9 SECTION 1. That a certain Agreement dated May, 1982  
10 between the City of Fort Wayne, Indiana, by and through its  
11 Mayor and the Board of Public Works, and Ronald L. Bonar &  
12 Associates, Inc., for:  
13 *PREPARATION OF PLANS AND SPECIFICATION ALONG WITH INSPECTION*  
14 ~~repairing and restoration of portions of~~  
the City Sewer System and the Water Pollution  
Control Plant including lagoons and ponds that  
were damaged by the 1982 Flood,  
15 at a total cost of Two Hundred Thirty Six Thousand Three and No/100  
16 Dollars (\$236,003.00), all as more particularly set forth in  
17 said Agreement which is on file in the Office of the Board of  
18 Public Works and is by reference incorporated herein, made a  
19 part hereof, be and the same is in all things hereby ratified,  
20 confirmed and approved. Two copies of said Agreement are on  
21 file with the Office of the City Clerk and made available for  
22 public inspection according to law.

23 SECTION 2. That this Ordinance shall be in full force  
24 and effect from and after its passage and approval by the Mayor.

27 \_\_\_\_\_  
Councilmember

28 APPROVED AS TO FORM  
29 AND LEGALITY

30  
31 Bruce O. Boxberger, City Attorney  
32

*Preparation of plans and  
specification along with inspection*

*D. Schmidt  
secretary  
By E. L. Smith*

TITLE OF ORDINANCE Agreement with Bonar & Associates, Inc.

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE An agreement between the City of Fort Wayne, Indiana through  
its Board of Public Works and Ronald L. Bonar & Associates, Inc. to repair and restore  
portions of the City Sewer System and the Water Pollution Control Plant including  
lagoons and ponds that were damaged by the 1982 Flood.

The 56 individual Federal Emergency Management Agency (FEMA) Damage Survey Reports (DSR)  
are described in detail and listed in Exhibit "C".

EFFECT OF PASSAGE completing repair of flood damage within the time limits of the  
FEMA grant.

EFFECT OF NON-PASSAGE will not be completed within time limit

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$236,003.00

ASSIGNED TO COMMITTEE

Chinnick  
6/20/82

71-260-25 H.I.

6/2/82

This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification.

Revised 5/26/82

STANDARD FORM OF AGREEMENT  
BETWEEN  
**OWNER AND ENGINEER**  
FOR  
**PROFESSIONAL SERVICES**

*Prepared by*

ENGINEERS' JOINT CONTRACT DOCUMENTS COMMITTEE

*and*

*Issued and Published Jointly by*



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

*and by*

AMERICAN CONSULTING ENGINEERS COUNCIL

*and by*

AMERICAN SOCIETY OF CIVIL ENGINEERS

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## Further Description of Basic Engineering Services and Related Matters

1. This is an exhibit attached to, made a part of and incorporated by reference into the Agreement made on \_\_\_\_\_, 19\_\_\_\_ between \_\_\_\_\_ (Owner) and (Engineer) providing for professional engineering services. The Basic Services of Engineer as described in Section 1 of the Agreement are amended or supplemented as indicated below and the time periods for the performance of certain services as indicated in Section 4 of the Agreement are stipulated as indicated below.

2. During the Study and Report Phase ENGINEER shall:

(insert amendments or supplements to paragraph 1.2.)

The Study and Report Phase Services will be completed and the Report submitted within \_\_\_\_\_ calendar days following written authorization from OWNER to ENGINEER to proceed with that phase of services.

3. During the Preliminary Design Phase ENGINEER shall:

(insert amendments or supplements to paragraph 1.3.)

The Preliminary Design Phase Services will be completed and ENGINEER's documentation and opinion of costs submitted within \_\_\_\_\_ calendar days following written authorization from OWNER to ENGINEER to proceed with that phase of services.

4. During the Final Design Phase ENGINEER shall:

(insert amendments or supplements to paragraph 1.4.)

The Final Design Phase Services will be completed and Contract Documents and ENGINEER's opinion of costs submitted within \_\_\_\_\_ calendar days following written authorization from OWNER to ENGINEER to proceed with that phase of services.

[If the construction work is to be performed under more than one prime contract, the provisions of paragraph 4.11 will probably apply and it will be necessary to prepare a special schedule for the Final Design Phase Services.]

5. During the Bidding or Negotiating Phase ENGINEER shall:

(insert amendments or supplements to paragraph 1.5.)

[If the construction work is to be performed under more than one prime contract, the provisions of paragraph 4.11 will probably apply and it will be necessary to prepare a special schedule for the Bidding or Negotiating Phase Services.]

6. During the Construction Phase ENGINEER shall:

(insert amendments or supplements to paragraph 1.6.)

[If the construction work is to be performed under more than one prime contract, the provisions of paragraph 4.11 will probably apply and it will be necessary to prepare a special schedule for the Construction Phase Services.]

This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification.

STANDARD FORM OF AGREEMENT  
BETWEEN  
OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of       May      , 19 82  
between Board of Public Works, of the City of Fort Wayne, Indiana, City-County Building  
One Main Street, Fort Wayne, Indiana 46802 (OWNER) and  
Ronald L. Bonar & Associates, Inc., 616 South Harrison Street, Fort Wayne, Indiana  
46802 (ENGINEER).  
OWNER intends to repair and restore portions of the City Sewer System and the Water  
Pollution Control Plant including lagoons and ponds that were damaged by the 1982  
Flood and as described in detail on Federal Emergency Management Agency (FEMA) Damage  
Survey Reports (DSR) which are listed on Exhibit "C".

\_\_\_\_\_ (hereinafter called the Project).

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

ENGINEER shall provide professional engineering services for OWNER in all phases of the Project to which this Agreement applies, serve as OWNER's professional engineering representative for the Project as set forth below and shall give professional engineering consultation and advice to OWNER during the performance of services hereunder.

SECTION 1—BASIC SERVICES OF ENGINEER

1.1. General.

1.1.1. ENGINEER shall perform professional services as hereinafter stated which include customary civil, structural, mechanical and electrical engineering services and customary architectural services incidental thereto.

~~1.2. Study and Report Phase.~~

~~After written authorization to proceed, ENGINEER shall:~~

~~1.2.1. Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.~~

~~1.2.2. Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or~~

services of the types described in paragraph 3.3, and act as OWNER's representative in connection with any such services.

1.2.3. Provide analyses of OWNER's needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.

1.2.4. Provide a general economic analysis of OWNER's requirements applicable to various alternatives.

1.2.5. Prepare a Report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved and the alternative solutions available to OWNER and setting forth ENGINEER's findings and recommendations with opinions of probable costs for the Project, including Construction Cost, contingencies, allowances for charges of all professionals and consultants, allowances for the cost of land and rights-of-way, compensation for or damages to properties and interest and financing charges (all of which are herein after called "Project Costs").

1.2.6. Furnish five copies of the Report and present and review it in person with OWNER.

The duties and responsibilities of ENGINEER during the Study and Report Phase are amended and supplemented as indicated in paragraph 2 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

### 1.3. Preliminary Design Phase.

After written authorization to proceed with the Preliminary Design Phase, ENGINEER shall:

1.3.1. In consultation with OWNER and on the basis of the accepted Report, determine the extent of the Project.

1.3.2. Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.

1.3.3. Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project Costs.

1.3.4. Furnish five copies of the above preliminary design documents and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Preliminary Design Phase are amended and supplemented as indicated in paragraph 3 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

### 1.4. Final Design Phase.

After written authorization to proceed  
ENGINEER shall:

1.4.1. On the basis of the approved DSR listed in Exhibit "C",

prepare for incorporation in the Contract Documents final drawings to show the character and extent of the Project (hereinafter called "Drawings") and Specifications.

1.4.2. Furnish to OWNER such documents and design data as may be required for, and assist in the preparation of, the required documents so that OWNER may apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

1.4.3. Advise OWNER of any adjustments to the latest opinion of probable Project Cost caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.

1.4.4. Prepare for review and approval by OWNER, his legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

1.4.5. Furnish five copies of the above documents and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Final Design Phase are amended and supplemented as indicated in paragraph 4 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

### 1.5. Bidding or Negotiating Phase.

After written authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

1.5.1. Assist OWNER in obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services.

1.5.2. Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the bidding documents.

1.5.3. Consult with and advise OWNER as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.

1.5.4. Assist OWNER in evaluating bids or proposals and in assembling and awarding contracts.

The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase are amended and supplemented as indicated in paragraph 5 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

#### 1.6. Construction Phase.

During the Construction Phase ENGINEER shall:

1.6.1. Consult with and advise OWNER and act as his representative as provided in Articles 1 through 17, inclusive, of the Standard General Conditions of the Construction Contract No. 1910-8, (1978 edition). The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided in paragraph 6 of Exhibit A "Further Description of Basic Engineering Services and Related Matters" and except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.

1.6.2. Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of Contractor(s) and to determine in general if such work is proceeding in accordance with the Contract Documents. ENGINEER shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work. ENGINEER shall not be re-

sponsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). ENGINEER's efforts will be directed toward providing a greater degree of confidence for OWNER that the completed work of Contractor(s) will conform to the Contract Documents, but ENGINEER shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During such visits and on the basis of on-site observations ENGINEER shall keep OWNER informed of the progress of the work, shall endeavor to guard OWNER against defects and deficiencies in such work and may disapprove or reject work failing to conform to the Contract Documents.

1.6.3. Review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions) and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto); determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) in accordance with the Contract Documents;

1.6.4. Issue all instructions of OWNER to Contractor(s); issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare change orders as required; have authority, as OWNER's representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work; but ENGINEER shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.

1.6.5. Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accom-

panying data and schedules, determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts; such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his recommendation), and that payment of the amount recommended is due Contractor(s); but by recommending any payment ENGINEER will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by ENGINEER to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incident thereto or that ENGINEER has made an examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that Contractor(s) have completed their work exactly in accordance with the Contract Documents.

1.6.6. Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the work has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that ENGINEER may recommend, in writing, final payment to each Contractor and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice shall be subject to the limitations expressed in paragraph 1.6.5.

1.6.7. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the Contractor(s)' or subcontractors' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise performing any of the Contractor(s)' work; however, nothing contained in paragraphs 1.6.1 thru 1.6.7, inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties undertaken by him in the Contract Documents.

## SECTION 2—ADDITIONAL SERVICES OF ENGINEER

### 2.1. General

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services except to the extent provided otherwise in Exhibit A "Further Description of Basic Engineering Services and Related Matters"; these will be paid for by OWNER as indicated in Section 5.

2.1.1. Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.3. Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER's control.

2.1.4. Providing renderings or models for OWNER's use.

2.1.5. Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.

2.1.6. Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing Value Engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and

(3) prolongation of the contract time of any prime contract by more than sixty days, (4) acceleration of the progress schedule involving services beyond normal working hours, and (5) default by Contractor(s).

2.1.14. Preparation of operating and maintenance manuals; protracted or extensive assistance in the utilization of any equipment or system (such as initial startup, testing, adjusting and balancing); and training personnel for operation and maintenance.

**2.1.15. Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.**

2.1.16. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the Project (except as agreed to under Basic Services).

2.1.17. Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise provided for in this Agreement.

## 2.2. Resident Services During Construction.

2.2.1. If requested by OWNER or recommended by ENGINEER and agreed to in writing by the other, a Resident Project Representative will be furnished, and will act as directed by ENGINEER in order to assist ENGINEER in observing performance of the work of Contractor(s). Such services will be paid for by OWNER as indicated in paragraph 5.1.2.4.

2.2.2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative and assistants will be set forth in Exhibit B which is to be identified, attached to and made a part of this Agreement before such services begin.

Page 5 of 14 pages

2.2.4. If OWNER designates another person to represent OWNER at the Project site who is not ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person and the effect thereof on the duties and responsibilities of ENGINEER under this Agreement will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

### SECTION 3—OWNER'S RESPONSIBILITIES

OWNER shall:

3.1. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

3.2. Assist ENGINEER by placing at his disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

3.3. Furnish to ENGINEER, as required for performance of ENGINEER's Basic Services (except to the extent provided otherwise in Exhibit A "Further Description of Basic Engineering Services and Related Matters"), data prepared by or services of others, including without limitation core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data or consultations not covered in Section 2; all of which ENGINEER may rely upon in performing his services.

3.4. Provide field control surveys and establish reference points and base lines (except to the extent provided otherwise in Exhibit A "Further Description of Basic Engineering Services and Related Matters") to enable Contractor(s) to proceed with the layout of the work.

3.5. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.

3.6. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

3.7. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

3.8. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid to him under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule or regulation applicable to their performance of the work.

3.9. Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER's services.

3.10. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect in the work of Contractor(s).

3.11. Furnish, or direct ENGINEER to provide, necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.

3.12. Bear all costs incident to compliance with the requirements of this Section 3.

## SECTION 4—PERIOD OF SERVICE

4.1. The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts and construction of the Project including extra work and required extensions thereto.

~~4.2. The services called for in the Study and Report Phase will be completed and the Report submitted within the stipulated period indicated in paragraph 2 of Exhibit A "Further Description of Basic Engineering Services and Related Matters" after authorization to proceed with that phase of services.~~

~~4.3. After acceptance by OWNER of the Study and Report Phase documents indicating any specific modifications or changes in the extent of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Preliminary Design Phase, and shall submit preliminary design documents and a revised opinion of probable Project Cost within the stipulated period indicated in paragraph 3 of Exhibit A "Further Description of Basic Engineering Services and Related Matters" after authorization to proceed with that phase of services.~~

4.4. After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Project Cost, indicating any specific modifications or changes in the extent of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Final Design Phase; and shall deliver Contract Documents and a revised opinion of probable Project Cost for all work of Contractor(s) on the Project within the stipulated period indicated in paragraph 4 of Exhibit A "Further Description of Basic Engineering Services and Related Matters" after authorization to proceed with that phase of services.

4.5. ENGINEER's services under the Study and Report Phase, Preliminary Design Phase and Final Design Phase shall each be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by OWNER or (2) thirty days after the date when such submissions are delivered to

OWNER for final acceptance, plus such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction over design criteria applicable to the Project.

4.6. After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Final Design Phase documentation including the most recent opinion of probable Project Cost and upon written authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of the negotiations with prospective Contractor(s) (except as may be otherwise required to complete the services called for in paragraph 6.2.2.5).

4.7. The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof, and will terminate upon written approval by ENGINEER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one prime contract.

4.8. If OWNER has requested significant modifications or changes in the extent of the Project, the time of performance of ENGINEER's services and his various rates of compensation shall be adjusted appropriately.

4.9. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within 180 calendar days (plus such additional time as may be required to complete the services called for under paragraph 6.2.2.5) after completion of the Final Design Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.

4.10. If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER's control, ENGINEER shall on written demand to OWNER (but without termination of this Agreement) be paid as provided in paragraph 5.3.2. If such delay or suspension extends for more than one year for reasons beyond ENGINEER's control, or if ENGINEER for any reason is required to render services more than one year

after Substantial Completion, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

4.11. In the event that the work designed or specified by ENGINEER is to be performed under more than one prime contract, OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negoti-

ating and Construction Phases in order to sequence and coordinate properly such services as applicable to the work under such separate contracts. This schedule is to be prepared whether or not the work under such contracts is to proceed concurrently and is to be included in Exhibit A "Further Description of Basic Engineering Services and Related Matters," and the provisions of paragraphs 4.4 through 4.10 inclusive, will be modified accordingly.

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## LUMP SUM METHOD OF PAYMENT

### SECTION 5—PAYMENTS TO ENGINEER

#### 5.1. Methods of Payment for Services and Expenses of ENGINEER.

5.1.1. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services rendered under Section 1 (as amended and supplemented by Exhibit A "Further Description of Basic Engineering Services and Related Matters") as follows:

~~5.1.1.1. *One Prime Contract.* If only one prime contract is awarded for construction materials, equipment and services for the entire Project, a lump sum fee of \$ \_\_\_\_\_, but, if the prime contract contains cost plus or incentive savings provisions for Contractor(s) basic compensation, a lump sum fee of \$ \_\_\_\_\_.~~

5.1.1.2 *Several Prime Contracts.* If more than one but less than ten separate prime contracts are awarded for construction materials, equipment and services for the entire Project, a lump sum fee as shown on Exhibit "D".

5.1.2. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

5.1.2.1. *General.* For Additional Services rendered under paragraphs 2.1.1 through 2.1.17, inclusive (except services covered by paragraph 2.1.7 and services as a consultant or witness under paragraph 2.1.16), on the basis of Payroll Costs times a factor of 2.0 for services rendered by principals and employees assigned to the Project.

5.1.2.2. *Special Consultants.* For services and reimbursable expenses of special consultants employed by ENGINEER pursuant to paragraph 2.1.7 or 2.1.17, the amount billed to ENGINEER therefor times a factor of 2.0.

5.1.2.3. *Serving as a Witness.* For the services rendered by principals and employees as consultants or witnesses in any litigation, hearing or proceeding in accordance with paragraph 2.1.16, at the rate of \$ 200.00 per day or any portion thereof (but compensation for time spent in preparing to appear in

any such litigation, hearing or proceeding will be on the basis provided in paragraph 5.1.2.1).

5.1.2.4. *Resident Project Services.* For resident services during construction furnished under paragraph 2.2.1, a lump sum fee as shown on Exhibit "D".

5.1.3. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 5.1.1 and 5.1.2, OWNER shall pay ENGINEER the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services.

5.1.4. The terms "Payroll Costs" and "Reimbursable Expenses" will have the meanings assigned to them in paragraph 5.4 which appears on the reverse side of this page.

#### 5.2. Times of Payments.

5.2.1. ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon ENGINEER's estimate of the proportion of the total services actually completed at the time of billing. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.

#### 5.3. Other Provisions Concerning Payments.

5.3.1. If OWNER fails to make any payment due ENGINEER for services and expenses within sixty days after receipt of ENGINEER's bill therefor, the amounts due ENGINEER shall include a charge at the rate of 1% per month from said sixtieth day, and in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.

5.3.2. In the event of termination by OWNER under paragraph 7.1 upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of Payroll Costs times a factor of 2.0 for services rendered dur-

ing that phase to date of termination by principals and employees assigned to the Project. In the event of any such termination, ENGINEER will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, plus all termination expenses. Termination expenses mean Reimbursable Expenses directly attributable to termination, which shall include an amount computed as a percentage of total compensation for Basic Services earned by ENGINEER to the date of termination, as follows:

20% if termination occurs after commencement of the Preliminary Design Phase but prior to commencement of the Final Design Phase; or

10% if termination occurs after commencement of the Final Design Phase.

#### 5.4. Definitions.

5.4.1. The Payroll Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all personnel engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical personnel, stenographers, typists and clerks; plus the cost of customary and statutory bene-

fits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. For the purposes of this Agreement, the principals of ENGINEER and their hourly payroll costs are:

Ronald L. Bonar \$21.03

The amount of customary and statutory benefits of all other personnel will be considered equal to 25 % of salaries and wages.

5.4.2. Reimbursable Expenses mean the actual expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); furnishing and maintaining field office facilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, and similar Project-related items in addition to those required under Section 1; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates.

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## SECTION 6—CONSTRUCTION COST AND OPINIONS OF COST

### 6.1. Construction Cost.

The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost of the entire Project to OWNER, but it will not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project. [Construction Cost is one of the items comprising Project Costs which is defined in paragraph 1.2.5.] When Construction Cost is used as a basis for payment it will be based on one of the following sources with precedence in the order listed for work designed or specified by ENGINEER:

6.1.1. For completed construction work the total costs of all work performed as designed or specified by ENGINEER.

6.1.2. For work designed or specified but not constructed, the lowest bona fide bid received from a qualified bidder for such work; or, if the work is not bid, the lowest bona fide negotiated proposal for such work.

6.1.3. For work designed or specified but not constructed upon which no such bid or proposal is received, the most recent estimate of Construction Cost, or, if none is available, ENGINEER's most recent opinion of probable Construction Cost.

Labor furnished by OWNER for the Project will be included in the Construction Cost at current market rates including a reasonable allowance for overhead and profit. Materials and equipment furnished by OWNER will be included at current market prices. No deduction is to be made from ENGINEER's compensation on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).

### 6.2. Opinions of Cost.

6.2.1. Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable Project Cost and Construction Cost provided for herein are to be made

on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by him. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to Project or Construction Cost he shall employ an independent cost estimator as provided in paragraph 3.8.

6.2.2. If a Construction Cost limit is established by written agreement between OWNER and ENGINEER, the following will apply:

6.2.2.1. The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Project or Construction Cost in excess of the then established cost limit will constitute a corresponding revision in the Construction Cost limit to the extent indicated in such revised opinion.

6.2.2.2. Any Construction Cost limit so established will include a contingency of ten percent unless another amount is agreed upon in writing.

6.2.2.3. ENGINEER will be permitted to determine what materials, equipment, component systems and types of construction are to be included in the Drawings and Specifications and to make reasonable adjustments in the extent of the Project to bring it within the cost limit.

6.2.2.4. If the Bidding or Negotiating Phase has not commenced within six months after completion of the Final Design Phase, the established Construction Cost limit will not be binding on ENGINEER, and OWNER shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or bids are sought.

6.2.2.5. If the lowest bona fide proposal or bid exceeds the established Construction Cost limit, OWNER shall (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's extent or quality. In the case of (3), ENGINEER shall, without additional charge, modify the Contract Documents as necessary to bring the Construction Cost within the cost limit. The providing of such service will be the limit of ENGINEER's responsibility in this regard and, hav-

ing done so, ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

## SECTION 7—GENERAL CONSIDERATIONS

### 7.1. Termination.

The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

### 7.2. Reuse of Documents.

All documents including Drawings and Specifications prepared by ENGINEER pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER; and OWNER shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

### 7.3. Controlling Law.

This Agreement is to be governed by the law of the principal place of business of ENGINEER.

### 7.4. Successors and Assigns.

7.4.1. OWNER and ENGINEER each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

7.4.2. Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 7.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

7.4.3. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and ENGINEER.

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## 7.5. Arbitration

7.5.1. All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated in paragraphs 7.5.3 and 7.5.4 below. This Agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph 7.5 will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction.

7.5.2. Notice of demand for arbitration must be filed in writing with the other parties to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.5.3. All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$200,000 (exclusive of interest and costs). The arbitra-

tors will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning, any claim, counterclaim, dispute or other matter in question where the amount in controversy thereof is more than \$200,000 (exclusive of interest and costs) or to render a monetary award in response thereto against any party which totals more than \$200,000 (exclusive of interest and costs).

7.5.4. No arbitration arising out of, or relating to, this Agreement may include, by consolidation, joinder or in any other manner, any person or entity who is not a party to this Agreement.

7.5.5. By written consent signed by all the parties to this Agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs 7.5.3 and 7.5.4 may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds \$200,000 (exclusive of interest and costs) or which is with any party not specifically described therein.

7.5.6. The award rendered by the arbitrators will be final, not subject to appeal and judgment may be entered upon it in any court having jurisdiction thereof.

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SECTION 8—SPECIAL PROVISIONS, EXHIBITS and SCHEDULES.

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8.1. This Agreement is subject to the following special provisions.

8.1.1. Reference Section 5, Engineer shall receive from Owner a lump sum payment for Basic Services and Resident Project Services for each respective DSR as shown on Exhibit "C".

8.2. The following Exhibits are attached to and made a part of this Agreement:

8.2.1. Exhibit A "Further Description of Basic Engineering Services and Related Matters" consisting of 1 pages.

8.2.2. Exhibit B "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" consisting of 2 pages.

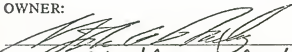
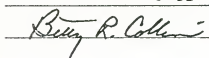
8.2.3. Exhibit C, "Owner's Project- Listing of DSR's Describing Scope of Work". (3 pages)

8.2.4 Exhibit D, "Engineer's Fee for Basic & Resident Services During Construction by DSR". (2 pages)

8.3. This Agreement (consisting of pages 1 to 14, inclusive), together with the Exhibits and schedules identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or cancelled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER:

  
Robert Anderson  
  
Betty R. Collins

ENGINEER:


  
Ronald L. T. Smales

EXHIBIT "A" TO AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES  
DATED MAY , 1982

FURTHER DESCRIPTION OF BASIC ENGINEERING SERVICES AND RELATED MATTERS

1. This is an exhibit attached to, made a part of and incorporated by reference into the Agreement made on May , 1982, between the Board of Public Works of the City of Fort Wayne, Indiana (Owner) and Ronald L. Bonar & Associates, Inc. (Engineer). The Basic Services of Engineer as described in Section 1 of the Agreement are amended or supplemented as indicated below and the time periods for the performance of certain services as indicated in Section 4 of the Agreement are stipulated as indicated below.

2. Owner's project as defined herein represents the scope of work that is described in detail on the various DSR's which are enumerated on Exhibit "C". Complete copies of these DSR's are available at Owner's Office and the Indiana Department of Civil Defense, Emergency Management Public Disaster Assistance Section, State Office Building, Indianapolis, Indiana.

It is understood that the project proposed by Owner is to be constructed utilizing Federal Funds made available by the Federal Emergency Management Agency (FEMA). Engineer agrees that preparation of the plans, specifications, and bid documents shall be in a form acceptable to FEMA.

Any change in scope of project requiring additional work in survey, design, plan preparation and resident project services not described above shall be considered Additional Services and will be paid for as indicated under Section 5 of the Agreement.

3. Section 1.2 Study & Report Phase, Section 1.3 Preliminary Design Phase, Sections 4.2 and 4.3, and Section 5.1.1.1 are hereby deleted from this contract.
4. During the Final Design Phase, Engineer shall: Proceed with the preparation of final plans, specifications, design and bid documents in accordance with the scope of work as listed in each respective DSR as shown in Exhibit "C".

It is understood that the "Project" as defined by the numerous DSR's in Exhibit "C" will be broken down into several construction contracts. It is the Owner's desire and intent to complete the construction of the "Project" in 1982. The final design phase services for the first construction contract will be completed and final plans, special provisions and Engineer's opinion of cost submitted within forty-five (45) calendar days following written authorization from Owner to Engineer to proceed with the contract.

Engineer shall prepare a detailed work schedule for each DSR included within this Project, showing design, bidding, construction and completion; submit said schedule to Owner by June 1.

5. Engineer shall assist Owner in the Bidding & Construction Phases as described herein. The period of service shall coincide with Owner's requirements for advertising, contract award, funding appropriation, etc.
6. The above time periods for completion of work by Engineer for Owner represent time spent on the Project by Engineer. This time frame shall be increased to allow for delays caused in review and approval by Owner, FEMA, or any other regulatory agency having input and participation in the Project.

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## Duties, Responsibilities and Limitations of Authority of Resident Project Representative

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### A. General.

Resident Project Representative is ENGINEER's Agent, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding his actions. Resident Project Representative's dealings in matters pertaining to the on-site Work shall in general be only with ENGINEER and CONTRACTOR, and dealings with subcontractors shall only be through or with the full knowledge of CONTRACTOR. Written communication with OWNER will be only through or as directed by ENGINEER.

### B. Duties and Responsibilities.

Resident Project Representative will:

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing submissions and schedule of values prepared by CONTRACTOR and consult with ENGINEER concerning their acceptability.
2. *Conferences:* Attend preconstruction conferences. Arrange a schedule of progress meetings and other job conferences as required in consultation with ENGINEER and notify those expected to attend in advance. Attend meetings, and maintain and circulate copies of minutes thereof.
3. *Liaison:*
  - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist him in understanding the intent of the Contract Documents. Assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
  - b. As requested by ENGINEER, assist in obtaining from OWNER additional details or information, when required at the job site for proper execution of the Work.
4. *Shop Drawings and Samples:*
  - a. Receive and record date of receipt of Shop Drawings and samples, receive samples which are furnished at the site by CONTRACTOR, and notify ENGINEER of their availability for examination.
  - b. Advise ENGINEER and CONTRACTOR or its superintendent immediately of the commencement of any Work requiring a Shop Drawing or sample submission if the submission has not been approved by ENGINEER.
5. *Review of Work, Rejection of Defective Work, Inspections and Tests:*
  - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is proceeding in accordance with the Contract Documents and that completed Work will conform to the Contract Documents.
  - b. Report to ENGINEER whenever he believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or does not meet the requirements of any inspections, tests or approval required to be made or has been damaged prior to final payment; and advise ENGINEER when he believes Work should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
  - c. Verify that tests, equipment and systems startups and operating and maintenance instructions are conducted as required by the Contract Documents and in presence of the required personnel, and that CONTRACTOR maintains adequate records thereof; observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
  - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the outcome of these inspections and report to ENGINEER.

6. *Interpretation of Contract Documents:* Transmit to CONTRACTOR ENGINEER's clarifications and interpretations of the Contract Documents.

7. *Modifications:* Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report them with recommendations to ENGINEER.

8. *Records:*

a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples submissions, reproductions of original Contract Documents including all addenda, change orders, field orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.

b. Keep a diary or log book, recording hours on the job site, weather conditions, data relative to questions of extras or deductions, list of visiting officials and representatives of manufacturers, fabricators, suppliers and distributors, daily activities, decisions, observations in general and specific observations in more detail as in the case of observing test procedures. Send copies to ENGINEER.

c. Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.

9. *Reports:*

a. Furnish ENGINEER periodic reports as required of progress of the Work and CONTRACTOR's compliance with the approved progress schedule and schedule of Shop Drawing submissions.

b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the work.

c. Report immediately to ENGINEER upon the occurrence of any accident.

10. *Payment Requisitions:* Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward them with recommendations to ENGINEER, noting particularly their relation to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

11. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed; and deliver this material to ENGINEER for his review and forwarding to OWNER prior to final acceptance of the Work.

12. *Completion:*

a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.

b. Conduct final inspection in the company of ENGINEER, OWNER and CONTRACTOR and prepare a final list of items to be completed or corrected.

c. Verify that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. *Limitations of Authority.*

Except upon written instructions of ENGINEER, Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.

2. Shall not exceed limitations on ENGINEER's authority as set forth in the Contract Documents.

3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors or CONTRACTOR's superintendent, or expedite the Work.

4. Shall not advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents.

5. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.

6. Shall not authorize OWNER to occupy the Project in whole or in part.

7. Shall not participate in specialized field or laboratory tests.

## OWNER'S PROJECT - LISTING OF DSR'S DESCRIBING SCOPE OF WORK

## SEWER SYSTEM

<u>DSR Number</u>	<u>Location</u>	<u>Description</u>	<u>Estimated Constr. Cost</u>
41987	20" Sewer & catch basin on Baltes at entrance to Filtration Plant	Structural damage to 2 catch basins & apparent damage to 20" sewer	\$ 9,236
41988	15" sewer in alley behind 1404 Oneida	Cavity in alley due to sewer damage	18,450
44760	Damage in alley behind 1493 Edgewater	Separation of 12" sewer joint breakdown of tap connection	10,500
44818	Alley between Prospect and Anderson	Point break in sewer line 400' east of Spy Run	5,070
44822	Bradbury at Prairie Grove	Evidence of collapse of one section of 63"x98" CMP	14,325
44824	1526 Steup west side street at alley	Joint break in 12" sewer adjacent manhole	4,750
47024	150' west in alley north of Riverside	3-foot diameter by 2-foot cavity in alley	19,700
47026	2300 Block of Julliett	4' diameter depression in asphalt street caused by separation or collapse	10,500
47071	12" sewer under east side of Calhoun	Cavity in east side of Calhoun	8,725
47072	15" sewer under alley east of Van Buren & south of Michael	4' x 4' deep cavity in alley	30,700
47082	20" sewer under alley north of Prospect	Large depression in gravel alley due to structural damage	13,750
47091	12" RCP sewer under alley south of Rudisill	6' diameter by 3' deep cavity in asphalt alley due to structural damage	69,455
47094	12" RCP sewer under alley south of Nussbaum & west of Spy Run	4' deep cavity around MH due to structural damage	5,050
47097	8" sewer at 139 W. State east of Oakridge	Settlement of curb due to apparent damage to 8" sewer	11,770
47099	12" sewer under alley behind 831 Edgewater east of St. Joe Blvd.	Concrete pavement has collapsed in this area & entire alley from LaFort	33,100
47158	Alley southwest of Wildwood	Damage to 8" sewer pipe caused by flood, soil shifting	72,100

## SEWER SYSTEM (CONT'D.)

DSR Number	Location	Description	EXHIBIT "C" Estimated Constr. Cost
44894	54" sewer from Washington to Berry	Structural damage on line	\$622,046
44896	54" sewer running from Main and Harrison	Severe structural damage to brick sewer line along Crown and Spring line	235,824
41899	Spy Run Creek - St. Mary's River to Grove Street	Remove siltation and debris	163,548
41898	Spy Run Creek - St. Mary's River to Grove Street	Remove siltation and blockage at bridges and dam	18,822
41997	Foster Park Footbridge	Repair outfall structure	24,390
44895	Harrison St. & Calhoun	Repair 18" line	8,320
44875	St. Joseph River	Headwall Str. #17	3,100
44876	St. Joseph River	Headwall Str. #19	2,350
44877	St. Joseph River	Headwall Str. #22	950
44878	St. Joseph River	Headwall Str. #27	2,510
44879	St. Joseph River	Headwall Str. #32	550
44880	St. Joseph River	Headwall Str. #49	2,875
44881	St. Joseph River	Headwall Str. #50	1,890
44882	Maumee River	Headwall Str. #7	4,050
44883	St. Mary's River	Headwall Str. #48	2,400
44886	Third St.-Sherman to Calhoun	72" Brick Structural Damage	760,000
44898	St. Joseph River	Headwall Str. #1A	3,100
44899	St. Joseph River	Headwall Str. #1	2,961
44900	Maumee River	Headwall Str. #6	2,000
47241	Broadway & Rudisill	Manhole Repair	1,000
47242	1314 Harrison	Manhole Repair	3,200
47243	512 Wagner	20" Sewer Structural Damage	7,390
47089	Cody & Pemberton	Manhole & Valves (24")	32,360
47093	Nebraska Area	Clean & Repair Sewers	13,500

## OWNER'S PROJECT - LISTING OF DSR'S DESCRIBING SCOPE OF WORK

## WATER POLLUTION CONTROL PLANT

<u>DSR Number</u>	<u>Location</u>	<u>Description</u>	<u>Estimated Constr. Cost</u>
47105	WPC Plant	Resurface drives	\$ 12,060
47105	WPC Plant	Repair stone wall	888
47103	WPC Plant	Repair broken curb	6,800
47107	WPC Plant	Repair expansion joint leaks (3)	41,016
47108	WPC Plant	Miscellaneous repairs	8,543
47110	WPC Plant	Miscellaneous repairs	4,460
47122	Ponds	Ponds-Clean-up & misc. repairs	17,553
47124	Lagoons	Sludge Lagoons- Road & dike repair	311,609
47127	Lagoons	Dredge overflow channel	116,901
47126	Lagoons	Grit lagoon	20,265
47128	Lagoons	Old sludge lagoons	19,170
47132	Overflows	Regulator monitoring panel replacement	41,800
47133	Thieme Dr. Sewer	Thieme Dr. flapgate replacement	2,500
47131	Morton St. Pump Station	Morton St. discharge repair	3,950
44888	WPC Plant	Hazard Mitigation Construct Mound Along Plant	49,160
44873	Lagoons	Hazard Mitigation Construct Wall at west end of Lagoons	52,000

EXHIBIT "D"

ENGINEER'S FEE FOR BASIC & RESIDENT SERVICES DURING CONSTRUCTION BY DSR

SEWERS

<u>DSR Number</u>	<u>Estimated Construction Cost</u>	<u>Basic Fee</u>	<u>Resident Services Fee</u>
41987	\$ 9,236	\$ 1,020	\$ 560
41988	18,450	1,937	560
44760	10,500	1,155	560
44818	5,070	558	560
44822	14,325	1,770	560
44824	4,750	523	280
47024	19,700	2,167	280
47026	10,500	1,155	560
47071	8,725	960	560
47072	30,700	3,223	560
47082	13,750	1,512	560
47091	69,455	6,040	1,120
47094	5,050	555	280
47097	11,770	1,294	840
47099	33,100	3,476	560
47158	72,100	5,768	1,120
44894	579,747	42,299	6,720
44896	218,137	17,687	4,200
41898	18,822	1,995	560
41899	163,548	14,065	3,360
41997	24,390	2,585	1,400
44895	8,320	915	560
44875	3,100	341	120
44876	2,350	260	120
44877	950	100	60
44878	2,510	220	120

Engineer's Fee for Basic & Resident  
Services during Construction by DSR

Sewers(cont'd)

<u>DSR Number</u>	<u>Estimated Construction Cost</u>	<u>Basic Fee</u>	<u>Resident Services Fee</u>
44879	\$ 550	\$ 60	\$ 60
44880	2,875	316	120
44881	1,850	204	60
44882	4,050	445	120
44883	2,400	264	60
44886	760,000	51,000	7,200
44898	3,100	341	60
44899	2,961	325	60
44900	2,000	220	60
47241	1,000	110	60
47242	3,200	352	60
47243	7,390	810	240
47089	32,360	3,400	720
47093	<u>13,500</u>	<u>1,485</u>	<u>240</u>
	\$2,196,291	\$172,912	\$9,540

## ENGINEER'S FEE FOR BASIC &amp; RESIDENT SERVICES DURING CONSTRUCTION BY DSR

WPC PLANT

<u>DSR Number</u>	<u>Estimated Construction Cost</u>	<u>Basic Fee</u>	<u>Resident Services Fee</u>
47124	\$311,609	\$23,371	\$ 7,560
47127	116,991	10,529	1,960
47128	19,170	2,110	840
47106	12,060	1,325	840
47105	888	98	280
47103	6,800	750	280
47107	41,016	4,102	1,680
47108	8,543	940	280
47110	4,460	491	280
47122	17,553	1,930	840
47126	20,265	2,230	280
47132	41,800	4,389	1,400
47133	2,500	275	140
47131	3,950	435	140
44888	49,160	4,916	1,960
44873	<u>52,000</u>	<u>5,200</u>	<u>2,800</u>
	\$708,765	\$63,091	\$21,560

TITLE OF ORDINANCE Agreement with Bonar & Associates, Inc.DEPARTMENT REQUESTING ORDINANCE Board of Public WorksSYNOPSIS OF ORDINANCE An agreement between the City of Fort Wayne, Indiana through

its Board of Public Works and Ronald L. Bonar & Associates, Inc. to repair and restore  
portions of the City Sewer System and the Water Pollution Control Plant including  
lagoons and ponds that were damaged by the 1982 Flood.

The 56 individual Federal Emergency Management Agency (FEMA) Damage Survey Reports (DSR)  
are described in detail and listed in Exhibit "C".

EFFECT OF PASSAGE completing repair of flood damage within the time limits of the  
FEMA grant.

EFFECT OF NON-PASSAGE will not be completed within time limit

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$236,003.00

ASSIGNED TO COMMITTEE